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In the

Supreme Court of the United States

OCTOBER TERM 1956

No. 516

FEENER BUSINESS SCHOOLS, INC.
and
CARLETON L. FEENER,
Petitioners,
v.
SCHOOL OF SPEEDWRITING, INC.
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT
and
MOTION TO REQUIRE PRINTING OF THE ENTIRE RECORD

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I. This case presents a question whether the District Court of the United States for the District of Massachusetts and the United States Court of Appeals for the First Circuit in rendering their decisions herein on the matter of the order for contempt have so far departed from the accepted and usual course of Judicial Proceedings and so far sanctioned such a departure therefrom by the Lower Court as to call for the exercise of the supervisory power of the Supreme Court of the United States.

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To the Honorable, the Chief Justice of the United States and to the Associate Justices of the Supreme Court of the United States:

This is a petition for a writ of certiorari accompanied by a motion to require the printing of the entire record. Feener Business Schools, Inc., and Carleton L. Feener are the petitioners seeking the writ and the moving parties presenting the motion.

The petition is for the purpose of reviewing a decree or order of the United States Court of Appeals for the First Circuit affirming an order for contempt running against both petitioners which had been entered by the United States District Court for the District of Massachusetts.

The decree of the United States Court of Appeals for the First Circuit was entered on July 15, 1956. Your petitioners' petition for a rehearing was denied by the said Court on July 20, 1956. Review of the said decree of the United States Court of Appeals for the First Circuit involves also review of the opinion, order and decree of the United States District Court for the District of Massachusetts which was the subject of review in the opinion of the United States Court of Appeals for the First Circuit.

The opinion of the District Court of the United States for the District of Massachusetts is to be found at pages 11-16 of the Record and is reported in 139 Fed. Supp. (2) 110. The opinion of the United States Court of Appeals for the First Circuit is to be found at pages 21-27 of the Record and is reported in 234 Fed. (2) 1.

Jurisdiction

The order for contempt of the United States District Court for the District of Massachusetts was entered on February 27, 1956. (R.p.7.)

Both the order for contempt and the decree were affirmed by the United States Court of Appeals for the First Circuit on June 15, 1956. Record, pages 21-27.

The order of the United States Court of Appeals for the First Circuit denying rehearing was dated and entered on July 20, 1956. Record p.27.

This Court has jurisdiction to review the order for contempt by writ of certiorari under the provisions of 28 U.S.C. Section 1254.

Questions

In the actual state of the Record as it now stands the scope of review is necessarily limited to the following questions:

1. Can the findings and rulings of the trial judge justify an order of contempt in view of the terms of the decree which petitioners are adjudged to have transgressed? The decree is set forth in the Record, pages 9-11.

2. If the motion of the petitioners for the printing of the entire record is allowed, the second question may be open on the then state of the record, whether the findings and rulings of the trial judge are justified on the evidence before the court at the hearing on the petition for an order for contempt.

3. In either state of the record the question is necessarily presented whether the Court of Appeals for the First Circuit was in error in affirming the order for contempt of the District Court.

No question is raised regarding either the power of the District Court to modify the decree or the propriety of such modification.

Statement of the Case

This immediate proceeding arose on a petition brought by your Respondent against your Petitioners to have the latter adjudged in contempt for violation of a decree which had been entered in the District Court of the United States for the District of Massachusetts, and upon motions by both your Respondent and your Petitioners to modify the said decree.

The original decree had been entered in the United States District Court on July 20, 1954. Authority for this date is to be found in the opinion of the Court of Appeals, Record, page 22.

After hearing the District Court denied the motion of your Petitioners and allowed the motion of your Respondent and entered an order adjudging both your Petitioners in contempt.

No question is sought to be raised regarding either the power of the District Court to modify the decree or with regard to the propriety of the action of the District Court in modifying the said decree. Substantially the only question which your Petitioners seek to have this Court review is the order for contempt which, of course, was based on the decree in its original form.

The decree in its original form appears in the Record at pages 9-11. It will be noted that the District Court granted your Respondent's motion for modification of the final decree "in exactly the form in which the motion is presented." Record, page 14. The Decree as modified is to be found in the Record on pages 8 and 9.

The only change effected by the granting of the motion for modification of the decree was the deletion therefrom of the sixth paragraph thereof.

In essence it is the contention of your Petitioners that the findings and rulings of the District Court which are to be found in the opinion of that court in the Record, pages 11 to 16, were not sufficient to justify the District Court in entering the order for contempt against your Petitioners for the violation of the Final Decree as it stood prior to its modification.

ARGUMENT

1. THIS CASE PRESENTS A QUESTION WHETHER THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS AND THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT IN RENDERING THEIR DECISIONS HEREIN ON THE MATTER OF THE ORDER FOR CONTEMPT HAVE SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE

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OF JUDICIAL PROCEEDINGS AND SO FAR SANCTIONED SUCH A DEPARTURE THEREFROM BY THE LOWER COURT AS TO CALL FOR THE EXERCISE OF THE SUPERVISORY POWER OF THE SUPREME COURT OF THE UNITED STATES.

It is contended by your Petitioners that the tenor of the Final Decree in its original form, i.e. including paragraph 6, and before the modification thereof striking out the said paragraph, in substance was an injunction running against your Petitioners forbidding them from using the terms "SPEEDWRITING" or "SPEED WRITING" in any advertising matter (paragraph 5 of the Final Decree, Record, page 10) unless your Petitioners, in teaching such courses, employed "books and texts of the plaintiff." The plaintiff (your Respondent) is referred to in paragraph 6 of the decree as "The School of Speedwriting, Inc."

The express finding of the trial judge that the advertisements of your Petitioners which form the basis of the order for contempt included the statement "The course of resident instruction in speed writing being offered by the school employs and refers to books and other material published by 'The School of Speedwriting.' ".

The finding of the Court, it it be a finding, "that at no time since the original decree was entered by this Court has any student of the defendant corporation in fact been given a course in Speedwriting." (Record, page 12) seems to establish nothing but the lack of success of the advertising of your Petitioner, Feener Business Schools, Inc.

It would not be fair to the Court below to seek to review each of its separate findings of fact standing each by itself, because it is evident from a reading of the opinion as a whole that the Court proceeded on the basis of a general situation made up of the findings taken as a whole. On that basis the Court concluded that there had been "in effect a misrepresentation made by the defendant corporation." This conclusion appears from the opinion to

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be based upon subsidiary findings that the corporation did not have on hand manuals or books for the teaching of Speedwriting; that the defendant corporation had not determined whether, if a student did enroll in such a course, the manuals would be supplied under a general charge for the course or would be separately priced; that the kind of books essential to giving a genuine course in Speedwriting were not readily available in the general market in the metropolitan community on short notice and that Mrs. Feener did not disclose that "up to the present time no arrangements had been made which would make it possible at once to initiate a course in the subject." (Record, pages 12, 13).

It is obviously very difficult to attack successfully such findings without the possibility of review of the evidence before the trial judge. It is therefore for that reason that your Petitioners are moving this Court to require the printing of the entire record. It is however apparent, even from the opinion of the District Court and the colloquy at its end, that there were such books and manuals in the court room and in the presence of the trial judge and, upon the representation of trial counsel, such materials had been produced in response to notice from counsel for your Respondent so to produce. It is earnestly contended that this throws some doubt upon the finding that the defendant corporation "does not have on hand any manuals or books for the teaching of Speedwriting." It is further suggested that this finding is the key finding giving to the general conclusion of the District Court such validity as it may have as establishing that the defendant corporation was guilty of misrepresentation and of not conforming to the spirit of the original Final Decree of the Court.

Counsel is uncertain how much reliance can be placed upon the exchange between Court and counsel appearing at the bottom of page 15 and the top of page 16 of Record. It would seem that the party seeking an adjudication of contempt had the burden of proving all the necessary facts upon which to base such an adjudication. It

should then have been incumbent upon such party in this case to establish affirmatively the fact that the defendant corporation did not in good faith have such books and manuals. It does seem clear from the opinion taken as a whole that there was no such evidence, but that the evidence upon which the Court explicitly relied was evidence only of an officer of your Respondent that he had not found any in book stores of which he inquired.

Motion To Require Printing Of The Entire Record

Now come your Petitioners, Feener Business Schools, Inc. and Carleton L. Feener, and move this Honorable Court that an order be entered herein requiring the printing of the entire record.

By their attorney,

Edward T. Conley

Argument on Motion

The printed record which was before the United States Court of Appeals for the First Circuit and which was dealt with by that Court in its opinion, did not include the evidence taken at the hearing before the District Court. However, in the brief and Record Appendix on your Petitioners' Motion for a Rehearing addressed to the Court of Appeals, there was included a printed record of the trial before the District Court. The narrow record now before this Court discloses the fact that your Petitioners did petition the United States Court of Appeals for the First Circuit for a rehearing of the case. (R.p.27). Your Petitioners therefore suggest to this Honorable Court that perhaps properly speaking the official record

before this Court should include such appendix since it was presented to the Court of Appeals for the First Circuit on the Petition for Rehearing. In any event, it has been thought not improper to send to the Clerk of the United States Supreme Court nine copies of Petition for Rehearing including the account of the trial. This is for convenience only and not intended to mislead the Court into error as to the present state of the record.

Conclusion

On the basis of the foregoing arguments, it is respectfully requested that this Honorable Court allow your Petitioners' Motion for the Printing of the entire record and grant your Petitioners' Petition for the issuance of a writ of certiorari herein.

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